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FILED  
STATE OF CALIFORNIA  
PHYSICAL THERAPY BOARD OF CALIFORNIA  
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BY C. Guzman ANALYST

8  
9 **BEFORE THE**  
**PHYSICAL THERAPY BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11  
12 In the Matter of the Accusation Against:

Case No. 1D 2012 72541

13 **NOLAN JOHN ARIETA**

14 **86 Santa Barbara Road**  
15 **Pleasant Hill, CA 94523**

**A C C U S A T I O N**

16 **Physical Therapist License No. PT 33235**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Jason Kaiser (Complainant) brings this Accusation solely in his official capacity as  
22 the Interim Executive Officer of the Physical Therapy Board of California, Department of  
23 Consumer Affairs.

24 2. On or about November 8, 2006, the Physical Therapy Board of California issued  
25 Physical Therapist License Number PT 33235 to Nolan John Arieta (Respondent). The Physical  
26 Therapist License was in full force and effect at all times relevant to the charges brought herein  
27 and will expire on August 31, 2014, unless renewed.  
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## JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2660 of the Code states in relevant part:

"The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

"...

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

"...

"(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

"..."

5. Section 2661 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or

1 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
2 dismissing the accusation, information, or indictment."

3 6. Section 2239 of the Code states:

4 "(a) The use or prescribing for or administering to himself or herself, of any controlled  
5 substance, or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
6 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
7 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
8 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
9 consumption, or self-administration of any of the substances referred to in this section, or any  
10 combination thereof constitutes unprofessional conduct. The record of the conviction is  
11 conclusive evidence of such unprofessional conduct.

12 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
13 deemed to be a conviction within the meaning of this section. The Division of Medical Quality<sup>1</sup>  
14 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing  
15 may order the denial of the license when the time for appeal has elapsed or the judgment of  
16 conviction has been affirmed on appeal or when an order granting probation is made suspending  
17 imposition of sentence irrespective of a subsequent order under the provision of Section 1203.4 of  
18 the Penal code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
19 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
20 information, or indictment."

21 7. California Code of Regulations, title 16, section 1399.20, states:

22 "For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5  
23 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially  
24 related to the qualifications, functions or duties of a person holding a license under the Physical  
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26 <sup>1</sup> "Unless otherwise expressly provided, the term "board" as used in this chapter means the  
27 Medical Board of California. As used in this chapter or any other provision of law, "Division of  
28 Medical Quality" and "Division of Licensing" shall be deemed to refer to the board" (Bus & Prof.  
Code § 2002.)

1 Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a  
2 person to perform the functions authorized by the license or approval in a manner consistent with  
3 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the  
4 following:

5 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
6 violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

7 "(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with  
8 the practice of physical therapy.

9 "(c) Violating or attempting to violate any provision or term of the Medical Practice Act."

10 8. Section 2661.6 of the Code states:

11 "(a) The board shall establish a probation monitoring program to monitor probationary  
12 licenses.

13 "(b) The program may employ nonpeace officer staff to perform its probation monitoring.

14 "(c) The program shall be funded with moneys in the Physical Therapy Board."

#### 15 COST RECOVERY

16 9. Section 2661.5 of the Code states:

17 "(a) In any order issued in resolution of a disciplinary proceeding before the board, the  
18 board may request the administrative law judge to direct any licensee found guilty of  
19 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of  
20 the investigation and prosecution of the case.

21 "(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in  
22 any event be increased by the board. When the board does not adopt a proposed decision and  
23 remands the case to an administrative law judge, the administrative law judge shall not increase  
24 the amount of the assessed costs specified in the proposed decision.

25 "(c) When the payment directed in an order for payment of costs is not made by the  
26 licensee, the board may enforce the order of payment by bringing an action in any appropriate  
27 court. This right of enforcement shall be in addition to any other rights the board may have as to  
28 any licensee directed to pay costs.

1       "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be  
2 conclusive proof of the validity of the order of payment and the terms for payment.

3       "(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the  
4 license or approval of any person who has failed to pay all of the costs ordered under this section.

5       "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or  
6 reinstate for a maximum of one year the license or approval of any person who demonstrates  
7 financial hardship and who enters into a formal agreement with the board to reimburse the board  
8 within that one year period for those unpaid costs.

9       "(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund  
10 as a reimbursement in either the fiscal year in which the costs are actually recovered or the  
11 previous fiscal year, as the board may direct."

12       10. California Code of Regulations, title 16, section 1399.15 states, in relevant part:

13       "(a) In reaching a decision on a disciplinary action under the Administration Procedure Act  
14 (Government Code Section 11400 et seq.), the Board shall consider the "Guidelines for Issuing  
15 Citations and Imposing Discipline", (Revised August 2012, 4th Edition) which are hereby  
16 incorporated by reference. Deviation from these guidelines and orders, including the standard  
17 terms of probation, is appropriate where the Board, in its sole discretion, determines that the facts  
18 warrant such a deviation – for example: The presence of mitigating or aggravating factors; the age  
19 of the case; evidentiary problems..."

20       11. Standard Probation Condition No. 19 of the Guidelines for Issuing Citations and  
21 Imposing Discipline (Revised August 2012, 4th Edition) states:

22       "Respondent shall comply with all financial obligations required by this Order (e.g., cost  
23 recovery, restitution, probation costs) not later than 180 calendar days prior to completion of  
24 probation unless otherwise specified in Order. Upon successful completion of probation,  
25 Respondent's license shall be fully restored."

26       12. Standard Probation Condition No. 22 of the Guidelines for Issuing Citations and  
27 Imposing Discipline (Revised August 2012, 4th Edition) states:

1       “Respondent shall reimburse all costs incurred by the Board for probation monitoring  
2 during the entire period of probation. Respondent will be billed at least quarterly. Such costs shall  
3 be made payable to the Physical Therapy Board of California and sent directly to the Physical  
4 Therapy Board of California. Failure to make ordered reimbursement within sixty (60) days of the  
5 billing shall constitute a violation of the probation order.”

6                               FIRST CAUSE FOR DISCIPLINE

7                               (Substantially Related Conviction – October 1, 2012)

8       13.   Respondent’s license is subject to discipline for violating Business and Professions  
9 Code sections 2660(d) [substantially related conviction], in that he has twice been convicted of a  
10 crime substantially related to the qualifications, functions, and/or duties of a physical therapist.

11       14.   On October 11, 2012, in a criminal proceeding entitled *The People of the State of*  
12 *California v. Nolan John Arieta*, filed in Napa County Superior Court, Case Number CR162537,  
13 Respondent was convicted by plea of no contest of violating Harbors and Navigation Code (HN)  
14 section 655(c) [Operation of a Recreational Vehicle While Having a .08% or Higher Blood  
15 Alcohol], a misdemeanor. The circumstances are as follows:

16       15.   On June 30, 2012, a Napa County Sheriff’s Deputy (Deputy) stopped Respondent  
17 after observing a boat traveling in Capell Cove of Lake Berryessa without navigation lights after  
18 sunset. The Deputy observed Respondent’s display of objective signs of intoxication. The  
19 Deputy then asked Respondent if he had been drinking, to which Respondent replied, “no.” The  
20 Deputy smelled the odor of an alcoholic beverage and again asked Respondent how much he had  
21 to drink. Respondent replied, “none.” The Deputy then administered horizontal gaze and  
22 nystagmus test, which Respondent failed. The Deputy then asked Respondent how many he  
23 really had to drink, to which Respondent replied, “ok, a few.” The Deputy asked Respondent to  
24 submit to a preliminary alcohol screening (PAS) test, which Respondent refused. The Deputy  
25 then administered a standard field sobriety test, which Respondent failed. Later, Respondent  
26 admitted that he had two beers prior to operating the watercraft.

27       16.   The Deputy again offered Respondent a PAS test, which Respondent refused. The  
28 Deputy then arrested and handcuffed Respondent. Respondent then asked the Deputy, “[i]f I take

1 [the PAS test], will you let me go?" The Deputy replied that he would not. Respondent then  
2 asked the Deputy, if he took the PAS test and the results were under the legal limit, would the  
3 Deputy let him go, to which the Deputy replied that it was possible. The Deputy then  
4 administered the PAS test, wherein Respondent's samples measured .166% and .159% blood  
5 alcohol concentration (BAC) at 2119 and 2122 hours respectively. The Deputy then placed  
6 Respondent under arrest for violating HN section 655(b) [Operation of a Recreational Vehicle  
7 Under the Influence] and 655(c) [Operation of a Recreational Vehicle While Having a .08% or  
8 Higher Blood Alcohol].

9 17. On August 9, 2012, a criminal complaint entitled *People of the State of California v.*  
10 *Nolan John Arieta*, filed in Napa County Superior Court, Case Number CR162537, charged  
11 Respondent with violating HN sections 655(b) and (c).

12 18. On October 11, 2012, Respondent pled no contest to violating HN section 655(c) and  
13 the remaining charge was dismissed. Respondent was sentenced as follows: three years  
14 probation, two days jail time, three months Drinking Driver's Program and \$2,134 in fines.

15 (Substantially Related Conviction – March 24, 2004)

16 19. On March 24, 2004, in a criminal proceeding entitled *The People of the State of*  
17 *California v. Nolan John Arieta*, filed in Contra Costa County, Case Number 211717-4,  
18 Respondent was convicted by plea of no contest for violating Vehicle Code (VC) section  
19 23152(b) [Driving Under the Influence with a BAC Greater than .08%], a misdemeanor. The  
20 circumstances are as follows:

21 20. On November 27, 2003, a Pleasant Hill Police Officer (Officer) responded to a report  
22 from OnStar Emergency that a 2000 grey Chevrolet Suburban, license plate number DUX4ROB,  
23 had deployed its airbags. Upon arriving at the scene, the Officer saw an unattended Toyota truck  
24 with extensive rear end damage and Respondent's Chevrolet Suburban with extensive front end  
25 damage and airbag deployment. The Officer observed Respondent's objective signs of  
26 intoxication and asked him if he had consumed any alcohol prior to driving. Respondent replied  
27 that he had two pints of bud light. The Officer then administered a series of field sobriety tests,  
28 which Respondent failed. The Officer then asked Respondent to take the PAS test, to which

1 Respondent refused. The Officer then placed Respondent under arrest for violating VC section  
2 23152(a) [Driving Under the Influence of Drugs or Alcohol].

3 21. On January 16, 2004, a criminal complaint entitled *The People of the State of*  
4 *California v. Nolan John Arieta* was filed in Contra Costa County Superior Court, Case Number  
5 211717-4, charging Respondent with violating VC 23152(a) [Driving Under the Influence of  
6 Drugs or Alcohol] and 23152(b) [Driving While Having a .08% or Higher Blood Alcohol].

7 22. On March 24, 2004, Respondent pled no contest to violating VC 23152(b) and the  
8 remaining charge was dismissed. Respondent was sentenced as follows: three years probation,  
9 two days community service, First Offender Drinking Driver's Program, ninety days restricted  
10 license, and \$1615.00 in fines.

11 23. Respondent's license is subject to discipline for unprofessional conduct under Code  
12 section 2660(d), in that Respondent has been convicted of violating HN section 655(c) and VC  
13 section 23152(b), crimes that are substantially related to the qualifications, functions, or duties of  
14 a physical therapist.

#### 15 SECOND CAUSE FOR DISCIPLINE

##### 16 (Use of Alcohol in a Dangerous Manner)

17 24. Paragraphs 12 through 22 are incorporated herein:

18 25. Respondent's license is subject to discipline for unprofessional conduct under Code  
19 sections 2660(h) and 2239 [use of alcohol in a manner dangerous to himself or others], in that  
20 Respondent has twice been convicted of operating a motorized vehicle while under the influence  
21 of alcohol, first on March 24, 2004 for driving a car with a BAC higher than .08%, and again on  
22 October 11, 2012 for operating a watercraft with a BAC higher than .08%. Thus, Respondent is  
23 guilty of using alcohol in a manner dangerous to himself or others.

#### 24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
26 and that following the hearing, the Physical Therapy Board of California issue a decision:

27 1. Revoking or suspending Physical Therapist License Number PT 33235, issued to  
28 Nolan John Arieta;




1           2.     Ordering Nolan John Arieta to pay the Physical Therapy Board of California the  
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 2661.5;

4           3.     Ordering Nolan John Arieta to pay the Physical Therapy Board of California the  
5 reasonable costs of probation if placed on probation, pursuant to the Guidelines for Issuing  
6 Citations and Imposing Discipline; and

7           4.     Taking such other and further action as deemed necessary and proper.  
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10     DATED: April 4, 2013

  
\_\_\_\_\_  
JASON KAISER  
Interim Executive Officer  
Physical Therapy Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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